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No. 08-1579

Supreme Court, U.S.
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In The
Supreme Court of the United States

THE RECTOR, WARDENS, AND VESTRYMEN OF ST. JAMES PARISH IN NEWPORT BEACH, CALIFORNIA, *ET AL.*,

Petitioners,

v.

THE PROTESTANT EPISCOPAL CHURCH IN THE DIOCESE OF LOS ANGELES, *ET AL.*,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

The Episcopal Church is an unincorporated association with no parent corporation or stock.

The Protestant Episcopal Church in the Diocese of Los Angeles is a diocese of The Episcopal Church and a nonprofit corporation formed under the laws of the State of California with no parent corporation or stock.

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INTRODUCTION

Apart from raising no substantive issues that warrant review, the Petition for a Writ of Certiorari should be denied on jurisdictional grounds because trial court proceedings remain ongoing and no final judgment will be entered until those proceedings have run their course. Petitioners acknowledge this, but seek to overcome this jurisdictional defect by relying on the fourth exception to the finality rule described in *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469 (1975). This exception does not apply because reversal on the grounds asserted in the Petition would not end the litigation, and declining immediate review would not "seriously erode" federal policy. Moreover, the California Supreme Court based its decision on independent state grounds.

Even were jurisdiction not lacking, there is no basis for granting certiorari:

- The neutral principles approach employed by the California Supreme Court to resolve this church property dispute was endorsed by this Court in *Jones v. Wolf* and has been adopted consistently by state courts to resolve similar disputes.

- The California Supreme Court's interpretation of California Corporations Code section 9142 follows existing United States Supreme Court authority enabling states to enact statutes governing church property disputes.

- There is no conflict among state courts regarding the constitutionality of section 9142 or any similar state statute. Nor is there any conflict among state courts as to whether general church rules should be considered in the application of neutral principles of law to a church property dispute.

- No clarification of the Court's holding in *Jones v. Wolf* is required here to address the question of how to determine whether a religious denomination is hierarchical or congregational because the California court did not characterize or analyze the nature of The Episcopal Church's governing structure. Based on St. James' own written commitments, the court concluded the Parish was bound by the rules of The Episcopal Church. In any event, there is no real dispute over whether The Episcopal Church is hierarchical. This has been repeatedly confirmed in a long, unbroken chain of judicial decisions.

- This case provides no occasion to address the question of whether courts should enforce denominational trust rules "unilaterally create[d]" and imposed by "canon fiat." Pet. 10, 20. The Episcopal Church's General Convention adopted Canon I.7.4 in 1979 by a majority vote through a democratic process involving delegates representing each parish, including St. James, 25 years before the dispute arose.

- Similarly, this case does not raise the question of whether a hierarchical church may receive favorable treatment not afforded secular organizations. The California Supreme Court's decision employed rules that apply equally to secular voluntary associations and charitable trusts.

- Finally, by upholding The Episcopal Church's trust interest, the decision reaches precisely the same result as the six other state courts of last resort that addressed this issue.

JURISDICTION

No jurisdiction exists to review the decision under 28 U.S.C. § 1257(a). No final judgment or decree has been rendered, and the parties continue to litigate in the trial court. The fourth exception to the finality rule described in *Cox Broadcasting Corp.* does not apply. *See infra* Part I.A. Moreover, the decision is adequately supported by independent state grounds. *See infra* Part I.B.

STATEMENT OF THE CASE

A. Factual Background

1. Structure of the Church.

The Episcopal Church ("Church") consists of approximately 7,600 worshipping congregations created

to carry out the Church's mission. New congregations are usually first formed as "missions." 1 A.A. 131; 3 A.A. 371; 4 A.A. 705-06.[1] If a mission meets criteria specified by its diocese, the diocese may admit it as a "parish" of the Church. 4 A.A. 709-12. Each parish is a subordinate part of the Church and the diocese in which it is located. 3 A.A. 371-72, 415, 427-28, 432, 435; 4 A.A. 701-02, 709-10.

All parishes are subject to the Church's three-tiered polity. Parishes are governed by a "vestry," consisting of the rector (an ordained Episcopal priest) and lay persons elected by the parish. 3 A.A. 371. Each parish is a part of the diocese in which it is located. Each diocese is governed by an "Annual Convention" of elected clergy and lay representatives from each parish. This body adopts and from time to time amends a diocesan Constitution and Canons, and elects a "diocesan bishop" who is the ecclesiastical authority within that diocese. 3 A.A. 371, 693-98, 700-01. All dioceses together make up the Church. The Church is governed by a "General Convention" composed of most of the Church's bishops and other representatives elected by each diocese. The General Convention has adopted and amends the Church's Constitution and Canons. 3 A.A. 371, 415-17, 424-26.

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[1] Respondents recognize the Court does not possess the full appellate record, but have included citations to Appellant's Appendix filed by The Episcopal Church in the California Court of Appeal and California Supreme Court.

The national and diocesan Constitutions and Canons are binding. 3 A.A. 371. Diocesan Constitutions require parishes to accede to the rules of the Church and dioceses as a condition of their formation. 3 A.A. 419; 4 A.A. 701-02. All clergy at ordination commit in writing to "solemnly engage to conform to the Doctrine, Discipline, and Worship of the Episcopal Church." Vestry members are required by Canon to "well and faithfully perform the duties of [their] office in accordance with the Constitution and Canons of this Church and of the Diocese in which the office is being exercised." 3 A.A. 421, 432.

2. Canons governing property.

The Church's Constitution and Canons govern both temporal and spiritual matters. Thus, the Canons contain numerous provisions restricting the use and control of parish property and governance of parishes to ensure that both the parish and its property will be used for their intended purpose—the Church's mission.

Aspects of the Church's policies regarding parish property are expressed in numerous canons. Canons II.6.2 and .3, adopted in 1868, prohibit parishes from "encumber[ing] or alienat[ing]" or "otherwise dispos[ing] of" consecrated property without consent of the diocese. 3 A.A. 375, 435. Canon II.6.1, added in 1871, makes clear that all consecrated property must be "secured for ownership and use by a Parish, Mission, Congregation, or Institution affiliated with

this Church and subject to its Constitution and Canons." 3 A.A. 374-75, 435. Canon I.7.3, adopted in 1940, provides that a parish may not encumber or alienate real property, consecrated or unconsecrated, without consent of the diocese. 3 A.A. 375-76, 429.

Further tying parish property to the Church's mission, Canon III.9.5(a)(2), adopted in 1904, provides that "[f]or the purposes of the office [of rector] and for the full and free discharge of all functions and duties pertaining thereto, the Rector shall, at all times, be entitled to the use and control of the Church and Parish buildings together with the appurtenances and furnishings. . . ." 3 A.A. 374. Canon III.9.5(a)(1) makes clear the rector's responsibilities must be carried out subject to "the Book of Common Prayer, the Constitution and Canons of this Church, and the pastoral direction of the Bishop." 3 A.A. 452.

Finally, in 1979, in response to *Jones v. Wolf*, 443 U.S. 595 (1979), which invited hierarchical churches to adopt "express trust" provisions in their governing documents to ensure, in the event of a dispute, that local church property would remain with the denomination and its members, the Church adopted Canon I.7.4. It states, "All real and personal property held by or for the benefit of any Parish, Mission or Congregation is held in trust for this Church and the Diocese thereof in which [it] . . . is located." 3 A.A. 376, 429.

3. History of St. James Parish.

St. James was founded as an Episcopal mission in 1946. 4 A.A. 757-58. In 1947, the mission petitioned the Diocese of Los Angeles ("Diocese") for recognition as a parish, promising in writing that it would:

> be forever held under, and conform to and be bound by, the Ecclesiastical authority of the Bishop of Los Angeles, . . . the Constitution and Canons of the [Episcopal] Church . . . , and the Constitution and Canons of the Diocese of Los Angeles.

The Diocese accepted the petition and established St. James Parish. 3 A.A. 488.

Consistent with Diocesan requirements, St. James' Articles of Incorporation provided the Parish would:

> form a constituent part of the Diocese of Los Angeles in . . . the . . . Episcopal Church . . . ; and . . . that the Constitution and Canons, Rules, Regulations and Discipline of said Church . . . and the Constitution and Canons in the Diocese of Los Angeles, for the time being *shall . . . always form* a part of the By-Laws and Articles of Incorporation . . . and shall prevail against and govern anything herein contained that may appear repugnant to such Constitutions, Canons, Rules, Regulations and Discipline.

3 A.A. 503-04 (emphases added). In 1991, St. James amended its Articles, retaining provisions incorporating the Constitutions and Canons of the Church and Diocese. 3 A.A. 489, 511-12. Until the present dispute arose, St. James operated as a subordinate part of the Church, in conformity with the Constitutions and Canons. 3 A.A. 489, 517-626.

In August 2004, St. James' vestry and a majority of members at a congregational meeting voted to disaffiliate from the Church. 4 A.A. 760. On August 18, 2004, the Diocesan Bishop prohibited St. James' clergy from functioning as Episcopal priests, appointed a Priest-in-Charge, and recognized the Parish's remaining Episcopal members as St. James' continuing congregation. 3 A.A. 633-41, 654. Although they left the Church, the individual petitioners and other disaffiliated members, despite their earlier promises, sought to retain St. James' property for their own use as part of a different denomination. 4 A.A. 761.

B. Proceedings Below

On September 7, 2004, the Diocese and an individual member of St. James filed suit to recover the Parish property. The Church was granted leave to intervene and filed its complaint on October 18, 2004.

On petitioners' motion, the trial court struck the Diocese's complaint under California's "anti-SLAPP"

statute, California Civil Procedure Code section 425.16.[2] Cal. Civ. Proc. Code § 425.16 (West 2004). The court also sustained petitioners' demurrer to the Church's amended complaint without leave to amend.

Consolidating the separate appeals initiated by the Church and Diocese, the Court of Appeal reversed. The California Supreme Court affirmed the Court of Appeal, using a somewhat different analysis.

The California Supreme Court first decided a preliminary procedural question—whether California Code of Civil Procedure section 425.16 governed the action. It concluded petitioners failed to prove the lawsuit arose from any activity protected by the statute, and therefore the trial court erred in dismissing the Diocese's complaint. Pet. App. 8a-10a.

The court then addressed the merits of the church property dispute. It first concluded California courts should follow the "neutral principles of law" approach approved by this Court in *Jones v. Wolf*. Employing that approach, the court observed that "St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing

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[2] "SLAPP" stands for "Strategic Lawsuit Against Public Participation." The anti-SLAPP statute affords a mechanism to obtain early dismissal of suits brought to chill protected First Amendment activity and having no likelihood of success on the merits.

instruments." Pet. App. 30a. The court noted Canon I.7.4 expressly states that local church property is "held in trust" for the Church and the Diocese (Pet. App. 24a), and further that "earlier-enacted canons . . . [also] impose substantial limitations on the local parish's use of church property and give the higher church authorities substantial authority over that property" (Pet. App. 28a). Taken together, these "instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church." Pet. App. 30a.

The court held that this conclusion, reached under the neutral principles analysis, also was supported by California Corporations Code section 9142. Cal. Corp. Code § 9142 (West 2006). "[I]t would appear that this statute also compels the conclusion that the general church owns the property now that defendants have left the general church." Pet. App. 29a-30a. Finally, the court rejected petitioners' challenge to the constitutionality of section 9142, stating that "as applied here, the section is fully consistent with *Jones v. Wolf*, *supra*, 443 U.S. at page 606, and promotes the free exercise rights of persons to form and join a religious association that is constructed and governed as they choose." Pet. App. 35a.

REASONS FOR DENYING THE PETITION

I. NO JURISDICTION EXISTS TO REVIEW THE DECISION.

A. No Final Judgment or Decree Has Been Rendered for Purposes of Section 1257(a), and No Recognized Exception to the Finality Rule Applies.

Petitioners concede the California Supreme Court's decision below is not final for purposes of section 1257(a). They assert, however, this Court has jurisdiction over one narrow portion of the California ruling—its interpretation of California Corporations Code section 9142—under the fourth category of exceptions to the finality rule set forth in *Cox Broadcasting Corp.*, 420 U.S. at 482-83. Pet. 3. The Petition, however, fails to fully describe the fourth category of exceptions. This Court's complete description of the proffered exception follows, with the portion omitted by petitioners in italics.

> Lastly, there are those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking review here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, *and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state*

> *proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.*

Cox Broadcasting Corp., 420 U.S. at 482-83 (emphasis added). Clearly, this exception to the finality rule does not apply.

At the outset, it is not clear the California Supreme Court's interpretation and application of California Corporations Code section 9142 is "final" for purposes of section 1257(a). Over respondents' protests, the parties continue to litigate this matter in the California Superior Court. On July 10, 2009, the trial court ruled petitioners are entitled to pursue their affirmative defenses and a cross-complaint.[3] In so doing, the trial court accepted petitioners' argument the California Supreme Court decided nothing more than California's "anti-SLAPP" statute does not apply. Petitioners contend in the trial court that section 9142 does not apply at all, and the Church and Diocese must still prove the Church is a

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[3] The Church and Diocese believe the trial court erred and they are entitled to judgment in their favor based on the California Supreme Court's decision. In response to the trial court's decision, they have filed a petition for writ of mandate in the California Court of Appeal seeking final judgment. The petition remains pending as of the date this Brief in Opposition was filed.

"superior religious body" for purposes of the statute. Petitioners' post-remittitur arguments, and the trial court's subsequent ruling, directly contradict petitioners' finality argument for purposes of jurisdiction in this Court.

Moreover, petitioners make no attempt to meet *Cox Broadcasting Corp.*'s prerequisites that "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action" and that allowing the decision to stand without immediate review could "seriously erode federal policy." *Cox Broadcasting Corp.*, 420 U.S. at 482-83.

First, if the Court were to find section 9142 unconstitutional, this would not preclude further litigation because the California Supreme Court's ruling rested on neutral principles wholly apart from the statute. Pet. App. 27a-28a ("Thus, the high court's discussion in *Jones v. Wolf* . . . , together with the Episcopal Church's adoption of Canon I.7.4 in response, strongly supports the conclusion that, once defendants left the general church, the property reverted to the general church.").

Second, denying immediate review of the state court decision would not "seriously erode federal policy." *Cox Broadcasting Corp.*, 420 U.S. at 483. The federal government has no "policy" concerning the manner in which religious denominations or their congregations hold or control property—nor could it. Furthermore, the result reached below, under both neutral principles approved by this Court and independently under section 9142, is entirely consistent

with decisions rendered over the past three decades by the highest courts in Nevada (1980), New Jersey (1980), Colorado (1986), Connecticut (1993), Pennsylvania (2005), and New York (2008), as well as California. *See infra* Part III.A. Given the thirty-year history of uniformity, this Court's declining immediate review of the decision could hardly erode any existing "policy." *See, e.g., Flynt v. Ohio*, 451 U.S. 619, 622 (1981) ("The resolution of this question can await final judgment without any adverse effect upon important federal interests."); *Johnson v. California*, 541 U.S. 428, 431 (2004). The Petition does not suggest otherwise.

Petitioners also ask the Court to "clarify *Jones v. Wolf* and provide the lower courts with further guidance on the significant constitutional questions implicated when the scope and nature of the hierarchy is itself a disputed question," and to review *Jones'* "inclusion of a denomination's constitution in the litany of sources of neutral principles of law . . . ." Pet. 25, 34. For purposes of the finality rule, these issues go well beyond the scope of whether section 9142 is unconstitutional, and instead relate directly to the analysis of this matter under "neutral principles of law"—an analysis which petitioners do not contend has been finally resolved in the state courts. The *Cox Broadcasting Corp.* exception simply does not apply to these issues.[4]

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[4] In any event, even if the Court were to accept petitioners' invitation to tinker with the evidentiary framework for church

(Continued on following page)

B. The Decision Below Is Adequately Supported By Independent State Grounds.

As this Court has explained, its "power is to correct wrong judgments, not to revise opinions. We are not permitted to render an advisory opinion[.]" *Herb v. Pitcairn*, 324 U.S. 117, 125-26 (1945). Thus, a petition for certiorari will not be granted if "the same judgment would be rendered by the state court after we corrected its views of federal laws." *Id.* In this case, adequate and independent grounds support the California Supreme Court's opinion reversing the trial court's dismissal of the Church's and Diocese's complaints.

1. Apart from section 9142, the opinion is independently supported by the California Supreme Court's neutral principles analysis.

As noted above, the California Supreme Court adopted the neutral principles of law approach

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property disputes established in *Jones*, a reversal of the California Supreme Court's decision would not preclude further litigation. As in *Jones*, any articulation of a new constitutional framework would require remand for further proceedings. The Petition does not suggest otherwise and thus fails to satisfy any recognized exception to the finality rule. *See Nike, Inc. v. Kasky*, 539 U.S. 654, 658-59 (2003); *Florida v. Thomas*, 532 U.S. 774, 780 (2001). In fact, the Petition recognizes a new framework would require evidentiary questions to be "tested in the crucible of litigation under . . . state law." Pet. 34.

approved by this Court in *Jones v. Wolf* as the method of analysis for resolving church property disputes in California. Pet. App. 23a-24a. The court examined the facts of this case under that approach and concluded, "St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments." Pet. App. 30a. The court noted the Church's Canon I.7.4 expressly states local church property is "held in trust" for the Church and the Diocese, and further that "earlier-enacted canons [also] impose substantial limitations on the local parish's use of church property and give the higher church authorities substantial authority over that property." Pet. App. 28a. Taken together, these "instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church." Pet. App. 30a.

The court's opinion makes clear these facts alone support its conclusion under the neutral principles analysis, concluding:

> In short, St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments. Those instruments make clear that a local parish owns local church property in trust for the greater church and may use that property only so long as the local church remains part of the greater church. Respect for the First Amendment free

> exercise rights of persons to enter into a religious association of their choice, as delineated in *Jones v. Wolf, supra,* 443 U.S. 595 (as well as the provisions of section 9142) requires civil courts to give effect to the provisions and agreements of that religious association.

Pet. App. 30a-31a. "This conclusion," the court further explained, "is bolstered by a review of out-of-state cases that involved similar church property disputes within the Episcopal Church." Pet. App. 31a. Although none of the cited cases involved a state statute similar to section 9142, they nevertheless, "with near unanimity, awarded the disputed property to the general church."[5] *Id.*

To be sure, the court held its conclusion also was supported by section 9142. Pet. App. 28a. It is beyond doubt, however, the court would have reached the same conclusion even in the absence of the statute. *See* Pet. App. 30a-31a; *see also* Pet. App. 147a ("To the degree that section 9142 alters the common law rule enunciated by [then-current California Supreme Court

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[5] The one exception the court recognized, *Bjorkman v. Protestant Episcopal Church*, 759 S.W.2d 583 (Ky. 1988), arose before the Church's trust canon was adopted, "did not mention [that Canon], and . . . has not been followed by other jurisdictions." Pet. App. 32a-33a. Consistent with the California Supreme Court's observations, every appellate decision addressing a dispute within the Church after adoption of Canon I.7.4 has enforced the Canon in favor of the general church. *See infra* Part III.A.

precedent], that alteration *duplicates* the result required under the common law given the facts of this case.") (original emphasis). The court's determination is adequately supported on an independent state ground that petitioners concede is not yet ripe for review.

2. The judgment is independently supported by the court's interpretation of California's "anti-SLAPP" statute.

Review by the California Supreme Court occurred within the framework of a state procedural statute—the "anti-SLAPP" statute, California Civil Procedure Code section 425.16. Pet. App. 8a. In ruling on an anti-SLAPP motion under section 425.16, a California court decides first whether the defendant has made a threshold showing that the challenged cause of action is one arising from protected activity. *Equilon Enterprises v. Consumer Cause, Inc.*, 29 Cal. 4th 53, 67 (2002). "If the court finds such a showing has been made, it then determines whether the plaintiff has demonstrated a probability of prevailing on the claim." *Id.* "Only a cause of action that satisfies both prongs of the anti-SLAPP statute—i.e., that arises from protected speech or petitioning and lacks even minimal merit—is a SLAPP, subject to being stricken under the statute." *Navellier v. Sletten*, 29 Cal. 4th 82, 89 (2002). The court must deny an anti-SLAPP motion if it fails on either prong.

Here, the California Supreme Court affirmed the intermediate appellate court's conclusion the anti-SLAPP statute does not apply because petitioners failed to satisfy the first prong of the statute. Pet. App. 9a-10a. In other words, petitioners did not prove the complaint arose from activity protected by section 425.16. *Id.* The court's affirmance of the intermediate appellate court's reversal of the judgment rests upon an independent state ground that is adequate to support its decision. *See Herb*, 324 U.S. at 125-26.

On remand to the trial court, petitioners not only acknowledged their failure to satisfy the first prong of section 425.16 constituted an independent basis for the California Supreme Court's decision, they argued the court's decision was based *solely* on section 425.16 because "this was all [it] could do on appeal from the grant of a preliminary motion." In its July 10, 2009 order, the trial court agreed, ruling "[i]t was the anti-SLAPP motion alone that provided the mechanism by which the case was appealed."

The California Supreme Court's interpretation of a state procedural statute constitutes an independent state ground adequate to support its decision, and its interpretation is not subject to review by this Court.[6]

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[6] The Church's complaint-in-intervention was dismissed after a demurrer was sustained. An appellate ruling reversing judgment based on a demurrer is not a final ruling for purposes of section 1257(a). *Miss. & Kan. Interurban Ry. Co. v. City of Olathe*, 222 U.S. 185, 186 (1911). Moreover, there is no part of the California Supreme Court's opinion that applies solely to the

(Continued on following page)

II. THE CALIFORNIA SUPREME COURT'S INTERPRETATION OF SECTION 9142 DOES NOT RAISE ANY UNRESOLVED CONSTITUTIONAL ISSUES.

A. *Jones v. Wolf* Recognized the Enforceability of Denominational Trust Provisions.

In *Jones v. Wolf*, the Court was called upon to decide whether Georgia's specific approach to resolving church property disputes, which Georgia courts called the "neutral principles approach," was constitutional. Under that approach, courts looked to deeds, local church articles and bylaws, the constitution and rules of the denomination, and relevant state statutes to determine whether any of those sources demonstrated the property at issue was held for the denomination. *See Jones*, 443 U.S. at 599-601 (describing Georgia's approach in detail). If courts found a provision in any of those sources restricting local church property for use by a denomination and conferring a right to the property on the broader

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Church and not to the Diocesan plaintiffs as well, and the court's decision in the Diocese's favor alone fully reinstates all of the substantive claims in the case. The decision permits the Diocesan plaintiffs to seek a final judgment from the trial court concerning the use and control of the disputed property, including the same declaration sought by the Church—that the property held by St. James is held in trust for the Church and Diocese. The California Supreme Court's decision is fully and adequately supported by its interpretation of the anti-SLAPP statute.

church, they enforced it. *See, e.g.*, *Carnes v. Smith*, 222 S.E.2d 322 (Ga. 1976) (cited and discussed in *Jones*, 443 U.S. at 600-01, and enforcing express trust provision in Methodist Church's Book of Order). Where they found no such restriction in any of the sources identified, as in *Jones* itself, they ruled in favor of the local church. *Jones,* 443 U.S. at 608-09. This Court in *Jones* approved that specific method of analyzing church property disputes.

The Court reaffirmed the First Amendment "requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization," and held that the "neutral principles" approach under review was "consistent with the foregoing constitutional principles." *Jones*, 443 U.S. at 602. The neutral principles analysis was "flexible enough to accommodate all forms of religious organization and polity" because it offered "flexibility in ordering private rights and obligations to reflect the intentions of the parties." *Id.* at 603. It allowed religious societies to "specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership [of property] in the event of a schism or doctrinal controversy" through "reversionary clauses and trust provisions." *Id.*

Jones explained the neutral principles approach "cannot be said to 'inhibit' the free exercise of religion" because the general church can take steps, "[a]t any time before the dispute erupts," to ensure "that the faction loyal to the hierarchical church will

retain the church property." *Jones,* 443 U.S. at 606. One such step, specifically endorsed in *Jones*, is that "*the constitution of the general church can be made to recite an express trust in favor of the denominational church.*" *Id.* (emphasis added). *Jones* did not dictate that any particular method must be used to amend the general church's governing documents. As the California Supreme Court observed, "[r]equiring a particular method to change a church's constitution . . . *would* infringe on the free exercise rights of religious associations to govern themselves as they see fit." Pet. 27a (original emphasis).

Jones further clarified that "*any rule of majority representation can always be overcome,* under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or *by providing that the church property is held in trust for the general church and those who remain loyal to it.*" *Jones,* 443 U.S. at 607-08 (emphasis added). "In this manner a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desires of the members." *Id.* at 603-04.

At the very least, then, this Court made clear that states may constitutionally recognize and enforce

denominational trust provisions, as California has done.[7]

B. The Court Did Not Adopt an Unconstitutional Interpretation of Corporations Code Section 9142.

California Corporations Code section 9142 is fully consistent with *Jones'* explicit guidance. The statute provides:

> (c) No assets of a religious corporation are or shall be deemed to be impressed with any trust, express or implied, statutory or at

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[7] For the past 30 years, religious denominations throughout the country have relied upon *Jones'* pronouncements in this regard. As petitioners acknowledge, "many mainline Protestant churches" have since adopted canons to explicitly confirm or establish the denomination's trust interest in local church property. Pet. 19; *see, e.g., Cumberland Presbytery v. Branstetter*, 824 S.W.2d 417, 422 (Ky. 1992) ("[T]he Cumberland Presbyterian denomination followed to a T the suggestion of the U.S. Supreme Court in *Wolf* as to a method of insuring 'that the faction loyal to the hierarchical church will retain the church property.'"); *Korean United Presbyterian Church v. Presbytery of the Pacific*, 230 Cal. App. 3d 480, 512 (Ct. App. 1991) ("[T]he United States Supreme Court in *Jones*, invited the very type of provision now found in the Book of Order."). State courts have applied the neutral principles test endorsed in *Jones* and enforced those provisions. *See infra* Part III.A. If the Court were to accept petitioners' suggestion to recede from the clear guidance provided in *Jones*, chaos would result, not only for The Episcopal Church, but for numerous religious denominations that have structured their governing rules in reliance upon *Jones* over the past three decades.

> common law unless *one* of the following applies: [¶] . . .
>
> (2) Unless, and only to the extent that, the articles or bylaws of the corporation, *or the governing instruments of a superior religious body or general church of which the corporation is a member, so expressly provide.* [¶] . . .
>
> (d) Trusts created by paragraph (2) of subdivision (c) may be amended or dissolved by amendment from time to time to the articles, bylaws, or governing instruments *creating the trusts*. . . .

(Emphasis added.)

As the California Supreme Court ruled, section 9142 "appears to be the type of statute the United States Supreme Court had in mind when it approved reliance on 'provisions of state statutory law governing the holding of property by religious corporations . . . .' (*Md. & Va. Churches v. Sharpsburg Ch.*, *supra*, 396 U.S. at p. 367, fn. omitted.)." Pet. App. 29a. In addition, like *Jones*, section 9142 by its plain terms provides that denominational trust provisions may be enforced. The California Supreme Court held Canon I.7.4 creates the type of express trust contemplated by section 9142, and the statute therefore "also compels the conclusion that the general church owns the property now that defendants have left the general church." Pet. App. 30a.

Petitioners argue the California Supreme Court adopted an unconstitutional interpretation of section 9142, in two respects. First, they assert the

interpretation impermissibly requires courts to determine, "as a threshold inquiry under Section 9142(c), whether one religious body is 'superior' to another, or whether a church is 'general' or not." Pet. 17. Petitioners state this analysis requires courts to resolve property disputes based on core religious doctrine and practice. Pet. 22-23. Second, they allege the court's interpretation of section 9142 gives general church associations the ability to unilaterally create trusts for themselves, thus favoring certain kinds of religious organizations over secular associations and other types of religious organizations. Pet. 12, 14. Neither point has merit.

1. The California Supreme Court did not decide any questions of religious doctrine or polity.

The court did not decide any questions about the structure of the Church or its religious doctrine. It merely concluded, based on St. James' own express written promises confirming the Church's Constitutions and Canons would "'forever'" form part of the Parish's governing documents, that the Parish is bound by the Church's rules. Pet. App. 4a, 30a. Whether the Church and Diocese are superior to the Parish from a theological perspective was irrelevant to the court's analysis of these documents, and its interpretation of written instruments does not raise constitutional issues.

In any event, the supposed difficulty of characterizing the governing structure of different religious

organizations is purely hypothetical as it pertains here—The Episcopal Church is undisputedly hierarchical, as that term has been defined and applied by civil courts.[8] Numerous courts have so held, and there are no decisions to the contrary. *See, e.g.*, *Dixon v. Edwards*, 172 F. Supp. 2d 702, 715 (D. Md. 2001) ("Courts have repeatedly and invariably recognized that the [Episcopal] Church is hierarchical. Indeed, there appears to be no case to the contrary and Defendants have noted none."), *aff'd in part and remanded in part on other grounds*, 290 F.3d 699 (4th Cir. 2002).[9]

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[8] The term "hierarchical" easily accommodates a range of church polities, including many that have various democratic or representational elements or delegate some decision-making authority to local church bodies. The only real question is whether the local church is subject to some higher authority that has taken action on the subject at hand. This is a determination civil courts are well equipped to make, and routinely do in the context of secular associations. *See, e.g.*, *United States v. Int'l Bhd. of Teamsters*, 968 F.2d 1506, 1511 (2d Cir. 1992) (distinguishing between affiliates "whose authority is derived from their hierarchical association with the international union" and other locals which are "independent entities").

[9] For a sampling of the numerous decisions uniformly holding the Church is hierarchical, *see, e.g.*, *Petrell v. Shaw*, 902 N.E.2d 401, 403 (Mass. 2009); *Episcopal Diocese of Rochester v. Harnish*, 899 N.E.2d 920, 921 (N.Y. 2008); *New v. Kroeger*, 167 Cal. App. 4th 800, 808 (Ct. App. 2008); *Episcopal Diocese of Mass. v. DeVine*, 797 N.E.2d 916, 921 (Mass. App. Ct. 2003); *Daniel v. Wray*, 580 S.E.2d 711, 714 (N.C. Ct. App. 2003); *Trustees of the Diocese of Albany v. Trinity Episcopal Church*, 684 N.Y.S.2d 76, 78 (N.Y. App. Div. 1999); *Parish of the Advent v.*

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Given the absolute uniformity of these decisions, there is no legitimate dispute, and certainly no conflict among state courts, regarding the hierarchical nature of the Church.

2. Section 9142 does not award an unconstitutional preference to hierarchical religious organizations.

Petitioners contend the approach adopted by the California Supreme Court is unconstitutional in that it grants special benefits to hierarchical churches that secular associations and other forms of religious organizations do not enjoy. Pet. 13-14, 17-18. The premise of this contention is simply incorrect. Enforcement of the Church's trust interest is consistent with how California courts treat *all* similarly situated associations, both secular and religious, and application of those rules here comports with the neutral principles doctrine.

Protestant Episcopal Diocese of Mass., 688 N.E.2d 923, 931 (Mass. 1997); *Moses v. Diocese of Colo.*, 863 P.2d 310, 325 (Colo. 1993); *Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc. v. Episcopal Church in the Diocese of Conn.*, 620 A.2d 1280, 1285 (Conn. 1993); *Bennison v. Sharp*, 329 N.W.2d 466, 473 (Mich. App. Ct. 1982); *Protestant Episcopal Church in the Diocese of N.J. v. Graves*, 417 A.2d 19, 24 (N.J. 1980); *Tea v. The Protestant Episcopal Church in the Diocese of Nev.*, 610 P.2d 182, 183 (Nev. 1980).

a. Enforcement of Church Canons under section 9142 is consistent with how California courts treat all voluntary associations, secular and religious.

Under California state law, the constitution and rules of a private secular voluntary association constitute a contract between the association and its members, and the law assumes members have voluntarily submitted themselves to the terms of that contract. *Cal. Dental Ass'n v. American Dental Ass'n*, 23 Cal. 3d 346, 353 (1979) ("'[T]he rights and duties of the members as between themselves and in their relation to [a private voluntary] association, in all matters affecting its internal government and the management of its affairs, are measured by the terms of [its] constitution and by-laws'"). California law applicable to secular voluntary associations also holds an organization's rules are binding on all members regardless of when they were enacted. *See, e.g.*, *Gear v. Webster*, 258 Cal. App. 2d 57, 61-62 (Ct. App. 1968) ("'This relation [between a voluntary association and its members] is to be determined, however, by a consideration of the entire body of the rules governing the association, and is not limited to those existing at the time the individual became a member. Unless the rules at that time placed a limitation upon the power of the association to make any change or amendment therein, any amendment or change adopted in accordance with the mode provided by the association therefor is binding upon each of the members.'").

Accordingly, California courts have enforced a superior organization's dictates regarding property held by subordinate chapters or members under circumstances similar to this case.

> When a schism has occurred in a . . . benevolent association, which has united with and assented to the control and supervision of a general organization, and acquired property since its union and assent to the government of the general organization, . . . the title to the property remains in the name of the association, and that faction which has remained loyal and adhered to the laws, usages, and customs of the general organization constitutes the true association, and is alone entitled to the use and enjoyment of the association's property. This rule applies whether the subordinate association be a corporation or simply a voluntary association, and regardless of whether the majority or minority of the entire membership constitute the faction adhering to and observing the laws, usages, and customs of the general organization . . . .

Most Worshipful Sons of Light Grand Lodge v. Sons of Light Lodge No. 9, 118 Cal. App. 2d 78, 85 (Ct. App. 1953); *see also Thatcher v. City Terrace Cultural Ctr.*, 181 Cal. App. 2d 433, 453 (Ct. App. 1960) ("'Local lodges come into being, not as independent organizations existing solely for the benefit of their members, but as constituents of the larger organization, the grand lodge, organized for specific purposes, most of which can be accomplished only through subordinate

bodies, the local lodges. . . . The property so acquired by the local lodge becomes impressed with the group purpose of a fraternal benefit society.'").

Nor does the court's interpretation of section 9142 prefer hierarchical over congregational churches—it affords equal treatment to each form of church organization by respecting the governing structure adopted by its members, and by giving due consideration to the governing rules adopted by the appropriate authority within that structure.

Enforcing a general church's trust provision against that church's members and constituent entities under section 9142 is consistent with long-standing California law applicable to all private voluntary associations, secular or religious.

b. Enforcement of Church Canons under section 9142 is consistent with generally applicable California state law concerning charitable trusts.

Petitioners assert the California Supreme Court's interpretation of section 9142 is unconstitutional because it exempts hierarchical denominations from general principles of state trust law. Pet. 26-27. The statute, however, is consistent with California state law governing charitable trusts.

"[A]ssets of charitable corporations are deemed to be impressed with a charitable trust by virtue of the

declaration of corporate purposes," and may not be diverted to other uses, charitable or otherwise. *Am. Ctr. for Ed., Inc. v. Cavnar*, 80 Cal. App. 3d 476, 486 (Ct. App. 1978); *see also Brown v. Mem. Nat'l Home Found.*, 162 Cal. App. 2d 513, 521 (Ct. App. 1958) ("[A]ll the assets of a corporation organized solely for charitable purposes must be deemed to be impressed with a charitable trust by virtue of the express declaration of the corporation's purposes . . . . In other words, the acceptance of such assets under these circumstances establishes a charitable trust for the declared corporate purposes as effectively as though the assets had been accepted from a donor who had expressly provided in the instrument evidencing the gift that it was to be held in trust solely for such charitable purposes") (quoting *Pac. Home v. County of Los Angeles*, 41 Cal. 2d 844, 852 (1953)). It is not necessary that the charitable organization agree in writing to hold its assets in trust—accepting the donated property establishes this duty as a matter of law. *Id.*; *see also* Cal. Bus. & Prof. Code § 17510.8 (West 2008).

St. James' Articles of Incorporation state the Parish was formed for the explicit purpose, "To establish and maintain a Parish which shall form a constituent part of the Diocese of Los Angeles in the branch of the Holy Catholic Church now known as the Protestant Episcopal Church in the United States of America," forever held under the "Ecclesiastical authority of the

Bishop of Los Angeles" in conformity with the Constitutions and Canons of the Episcopal Church. Generations of faithful Episcopalians donated money to St. James based on this expressed purpose—that of being an Episcopal parish. California law on charitable trusts provides that St. James' property cannot be diverted from this declared purpose.[10] Again, section 9142 is consistent with California trust law applicable to similarly situated charitable trusts.

III. THERE IS NO CONFLICT AMONG STATE COURTS THAT SUPPORTS REVIEW IN THIS CASE.

Petitioners contend the Court must clarify its holding in *Jones* because state courts have not applied that decision consistently. Again, this argument does not support review in this case. There is no conflict among state courts of last resort concerning the constitutionality of California Corporations Code section 9142 or any similar state statute, and

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[10] Some *amici* posit that church members mean for their donations to support only the local church, not the larger denomination. As the California Supreme Court observed in response to the same argument,

> [t]he only intent a secular court can effectively discern is that expressed in legally cognizable documents. In this case, those documents show that the local church agreed and intended to be part of a larger entity and to be bound by the rules and governing documents of that greater entity.

Pet. App. 37a.

petitioners point to none. As this is the only allegedly "final" portion of the opinion supporting jurisdiction in this Court, there is no need for review. Nor, as shown below, is there any conflict among state courts that would theoretically support review of any other issue addressed in the California court's opinion.

A. There Is No Split Among State Courts Regarding Enforcement of the Episcopal Church's Trust Interest in Parish Property.

Every state court of last resort addressing the issue has enforced the Church's express trust interest in parish property in accordance with the constitutional framework established in *Jones*. *See Episcopal Diocese of Rochester*, 899 N.E.2d 920; *In re Church of St. James the Less*, 888 A.2d 795 (Pa. 2005); *Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc.*, 620 A.2d 1280; *Bishop & Diocese of Colo. v. Mote*, 716 P.2d 85 (Colo. 1986); *Protestant Episcopal Church in Diocese of N.J.*, 417 A.2d 19; *Tea*, 610 P.2d 182.[11]

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[11] In addition, every intermediate state appellate court to consider the Church's express trust Canon has similarly enforced the Canon, and the Church's trust interest in parish property, in accordance with the guidelines established in *Jones*. *See, e.g., Episcopal Diocese of Mass.*, 797 N.E.2d 916; *Daniel*, 580 S.E.2d 711; *Bennison*, 329 N.W.2d 466.

This unbroken line of cases enforcing the Church's trust interest in parish property, spread over the last three decades, negates any notion there is a division among state courts that merits review or that any additional guidance from this Court is required on these facts.[12]

B. State Courts Agree the Neutral Principles Approach Approved in *Jones v. Wolf* Is a Permissible Method of Analysis, and General Church Rules Should Be Considered Under That Analysis.

1. There is no dispute that "neutral principles" are constitutionally permissible.

In *Jones*, this Court held that, subject to certain First Amendment limitations, states may utilize different methods for analyzing and resolving church property disputes. "[T]he First Amendment does not dictate that a State must follow a particular method of resolving church property disputes." *Jones*, 443

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[12] Petitioners cite *Bjorkman*, 759 S.W.2d 583, where the court declined to find a trust interest in favor of the denomination when the disaffiliation occurred prior to the denomination's adoption of an express trust provision. As the Kentucky Supreme Court explained in a subsequent decision, "in *Bjorkman* we had no general church constitutional pronouncement adopted before the dispute erupted, mandating expressly that all property was to be held in favor of the denominational church." *Cumberland Presbytery*, 824 S.W.2d at 422.

U.S. at 602. As noted above, this Court then held the particular neutral principles analysis developed in Georgia, and now adopted by the California Supreme Court, was constitutional. Although petitioners assert there is a dispute among state courts concerning whether the *Watson v. Jones* "deference" approach is constitutionally compelled, this Court should not grant certiorari simply to restate the precise point already made in *Jones v. Wolf*. Nor would the existence of such a dispute warrant review of the decision here, where the court plainly understood and correctly held the neutral principles analysis was a constitutionally acceptable option. In any event, there is no dispute among state courts.[13]

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[13] Petitioners erroneously assert West Virginia and New Jersey hold a hierarchical deference approach is "constitutionally compelled." Pet. 30 (citing *Church of God of Madison v. Noel*, 318 S.E.2d 920, 923 (W. Va. 1984) and *Protestant Episcopal Church in Diocese of N.J.*, 417 A.2d at 24). In fact, the West Virginia Supreme Court made clear its understanding that "another form of judicial review which meets constitutional considerations is the more scrutinizing 'neutral principles of law' test approved by the United States Supreme Court for property disputes." *Original Glorious Church of God in Christ, Inc. v. Myers*, 367 S.E.2d 30, 34 (W. Va. 1988). Similarly, the New Jersey Supreme Court explicitly recognized the neutral principles of law approach is "another acceptable method of resolving church property disputes." *Protestant Episcopal Church in Diocese of N.J.*, 417 A.2d at 23.

2. There is no dispute general church rules should be considered under "neutral principles."

In another attempt to create the appearance of conflict, petitioners allege the New Hampshire Supreme Court adopted an approach which does not permit any consideration of church constitutions or canons. Pet. 35. But, again, petitioners are incorrect. There are *no* cases holding, as petitioners would have this Court decide, that a denomination's governing documents should not be reviewed or enforced in a property dispute like the one at bar.

In *Berthiaume v. McCormack*, 891 A.2d 539 (N.H. 2006), the court considered a case brought by a few individual members of the Roman Catholic Church, who sought to reverse their bishop's decision to consolidate three existing parishes and sell the parish church in which the plaintiffs had previously worshipped. *Id.* at 541-43. The property at issue was titled in the name of the Catholic diocese. *Id.* at 548. Plaintiffs argued the bishop had a duty rooted in the Canons to preserve the parish church building for them. *Id.* The bishop, on the other hand, argued that to consolidate the three parishes and sell off the excess property was within his canonical and ecclesiastical authority. *Id.* at 543-44.

The New Hampshire Supreme Court affirmed the lower court's decision in favor of the bishop, explaining the deed vesting title in "Dennis M. Bradley, Bishop of Manchester" in combination with a New

Hampshire statute specifying that deeds to "Dennis M. Bradley, Bishop of Manchester" were to be interpreted as vesting property in "the Roman Catholic Bishop of Manchester," conclusively resolved the dispute before it. *Berthiaume*, 891 A.2d at 548, 550-51. There was no need to review or seek to define the extent of the bishop's canonical authority in the absence of any clearly worded canon specifically addressing that situation, and the court declined to do so. *Id.* Nor did the court address the issue of whether clearly expressed denominational rules restricting the use and control of local church property could or should be ignored.

C. The Alleged Conflict Between the Appellate Courts of California and Arkansas Is Easily Reconciled.

Petitioners further suggest there is a split of authority between this case and a recent Arkansas case. Pet. 25-26. Petitioners overlook the reality that the neutral principles analysis by its nature is a fact-specific inquiry. For that reason, it is hardly surprising that courts applying the analysis to different records involving different denominations might reach different conclusions as to which side should prevail in any given case.

Indeed, the Arkansas and California cases are easily reconciled. The Arkansas Supreme Court explicitly stated it did not consider the denomination's post-*Jones* adoption of an express trust provision

because counsel for the denomination had failed to raise the argument in the lower courts. *Ark. Annual Conference of AME Church, Inc. v. New Direction Praise & Worship Ctr., Inc.*, 375 Ark. 428, 436 n.1 (2009), *petition for cert. filed*, 77 U.S.L.W. 3634 (Apr. 30, 2009) (No. 08-1352) ("At oral argument, counsel for AME stated . . . the *Book of Discipline* was later amended to include [an express trust] provision. . . . [C]ounsel conceded that AME did not make this argument before the circuit court."). In addition, the court emphasized that "[n]o testimony or documents were introduced by any party regarding the formation of [the local church] or its initial connection with the [denomination]," and the evidence showed the local church "did not associate exclusively or even primarily with other [denominational] churches." *Id.* at 432.

In contrast, the California Supreme Court's decision rested upon the following facts, absent in the Arkansas case—"St. James Parish agreed from the beginning of its existence to be part of a greater denominational church and to be bound by that greater church's governing instruments." Pet. App. 30a.

Nor is there a conflict among state courts on which version of a general church's rules should be considered in the application of neutral principles—those in force when the local church was formed, or those in effect at the time of the dispute. *See* Pet. 27. The answer may vary depending upon the facts of each case and evidence in the record, and likely cannot be uniformly resolved by this Court as a

matter of federal or constitutional law. As noted above, it appears the parties in the Arkansas case presented only an older version of that denomination's rules, and the denomination failed to argue to the trial court that it should prevail based upon the rules in effect at the time of the conflict. *Ark. Annual Conference*, 375 Ark. at 436 n.1.

In any event, this case does not present an appropriate vehicle for addressing or resolving this timing issue. Every appellate decision has held that Canon I.7.4 did not create a new rule regarding property ownership, but merely restated and confirmed the Church's pre-existing policy. *See, e.g., In re Church of St. James the Less,* 888 A.2d at 810; *Rector, Wardens & Vestrymen of Trinity-Saint Michael's Parish, Inc.*, 620 A.2d at 1292; *Bishop & Diocese of Colo.*, 716 P.2d at 105 n.15; *Protestant Episcopal Church in Diocese of N.J.*, 417 A.2d at 24; *Trustees of the Diocese of Albany,* 684 N.Y.S.2d at 81; *see also* Pet. App. 28a, 32a (noting that a strong argument exists that Canon I.7.4 restated existing policy and citing numerous cases so holding).

Thus, whether this Court were to consider Canon I.7.4 or those Canons predating the acquisition of the local church property at issue here, the result would be the same. In addition, the California Supreme Court noted St. James had amended its Articles in 1991, well after enactment of Canon I.7.4, incorporating all the Canons of the Church. Pet. App. 5a. In California, members of voluntary associations are generally bound by organizational rules as they are

amended over time. *See supra* Part II.B.2(a). This, too, would justify application of Canon I.7.4 to St. James, even if the Canon were deemed a "new rule" adopted in 1979.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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